IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED ::23-11-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL ORIGINAL PETITION No.20789 of 2007

M/s.TVS Finance and Services Ltd.,
rep.by its Authorised Signatory
Mr.G.Saikumar. ... Petitioner

-vs-

1.The Additional Deputy Commissioner,
Central Crime Branch,
Egmore,
Chennai-8.

2.The Additional Director General of Police,
Admiralty House, CBCID,
Chennai-2.

3.The Inspector of Police,
Central Crime Branch-II,
Egmore,
Chennai-8. ... Respondents

Petition under Section 482 of the Code of Criminal Procedure.

For petitioner : Mr.S.Ashok Kumar,
Senior Counsel,
for M/s.Anand, Abdul & Vinodh Associates.

For respondents : Mr.A.Saravanan,
Govt.Advocate (Crl.Side).

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O R D E R

This petition has been filed, praying to transfer Crime No.251 of 2007 on the file of third respondent to the file of second respondent and to direct the second respondent to investigate the matter and file a final report in accordance with law.

2. Petitioner lodged a complaint on 24.04.2007 with the

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Commissioner of Police, Greater Chennai, on the basis of which an F.I.R.in Crime No.251 of 2007 came to be registered by Central Crime Branch, Chennai, for the offences under Sections 418 and 420 IPC. He has arraigned as many as 36 persons as accused and the complaint contains various transactions among the parties. He has now come forward with a request before this Court, stating that the third respondent, who is the Investigating Officer in the case, has not evinced any interest in the progress of the investigation and, hence, the case may be directed to be transferred to the file of second respondent. It is further alleged in the petition that the third respondent has shown only the offences punishable under Sections 418 and 420 IPC in the F.I.R., leaving out all other offences, by not even proceeded further. It is also mentioned that the third respondent has not arrested the accused in the case and no action has been taken in respect of further investigation; he has not summoned and enquired the accused; F.I.R. is a mere eye wash and that unnecessary delay in completing the investigation causes prejudice to the petitioner.

3. While this case was taken up by this Court on 13.07.2007, this Court directed the Investigating Officer to produce the entire materials collected by him before the Court and the reasons for referring the matter as a mistake of fact, in view of the fact that the amount involved in the matter ran to Rs.7.50 Crores. Accordingly, the third respondent produced the Case Diary before this Court and he has also filed a counter affidavit.

4. In the counter, the third respondent has sworn to the effect that no cognizable offences are disclosed against any of the accused; the petitioner has been keen on arresting the parties to the transaction; the entire case of the petitioner has arisen out of contractual obligations; the petitioner's belated approach after a lapse of several years on the loan transactions cannot form a basis for penal action and that the case, after sustained investigation, has been referred to as of civil nature. It is further averred in the affidavit that a referred notice was sent to the petitioner by registered post, but he refused to receive the same; there are no materials to substantiate any offence, as contended by the petitioner; the request of the petitioner for transferring the matter has no basis and that the investigation was conducted in a fair and proper manner and in accordance with law.

5. This Court has scrutinised the Case Diary carefully, from which it is seen that the third respondent has examined and recorded the statement of the complainant, namely, Saikumar, under Section 161 (3) Cr.P.C.; he also examined the fourth accused by name Ravisankar Prasad and eighth accused by name Mukund Vijayan and recorded their statements. As far as the merits of the matter are concerned, he has examined the complainant alone on his side. With regard to the other part of investigation, he has examined one Natarajan and Mahadevan, who are working as Security Guards, who

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appear to have stated that a three-storeyed building is being constructed and the same is on the verge of completion. Excepting the above said statement, there are no other statements of any witnesses available in the Case Diary.

6. Interesting it is to note that the Legal Adviser to the Commissioner of Police by name Nataraj has given a legal opinion on the request of third respondent on 15.05.2007, to the effect that Manohar Prasad, Ravisankar Prasad and Mukund Vijayan have committed offences under Sections 418 and 420 IPC. He has provided riders to his final legal opinion, as stated above, by saying that it is his personal view and it will not bind the Investigating Officer, who has got a right to express a different view and that only for official assistance, he has given his opinion. It is pertinent to mention that after after receiving the said opinion, the third respondent has probed the matter further and, on 25.06.2007, referred the matter with the report again, for legal opinion. On 04.07.2007, the above said Legal Adviser to the Commissioner of Police has given a contradictory opinion, stating that he had gone through the file carefully and it appeared that the final report of the Inspector was proper, by endorsing his view, and that on 15.05.2007, at the time of registering the F.I.R., he expressed some opinion and the same could be considered by the Investigating Officer, which might also be included in the final report. Again after receiving the said opinion, on 07.07.2007, the third respondent has submitted a report to the first respondent stating that the R.C.Notice would be served on the complainant soon and the final report submitted to the Court concerned. Finally, he prepared the R.C.Notice on 09.07.2007 and made arrangements to serve the same on the complainant. The Head Constable, who had gone to the office of the complainant, on enquiry, was informed by one Purushottaman on behalf of the complainant that the complainant was not present and when the said cop asked him to receive the notice, he refused it.

7. Though, at the first instance, the opinion of the Legal Adviser to the Commissioner of Police shows that offences under Sections 418 and 420 IPC would be made out against three accused, subsequently, acting upon the further report of the Investigating Officer, the very same Legal Adviser came forward and endorsed the view of the Investigating Officer, to refer the case as of civil nature. In other words, though the legally qualified person, after going through the allegations in the F.I.R., reached a conclusion that specific offences are made out against three accused, subsequently, he retracted his version and supported the action of

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the Investigating Officer. Notwithstanding this Court has not made an in-depth scrutiny of the allegations levelled by the complainant in his complaint, the allegations prima facie show that certain offences may be made out. which is for the Investigating Officer to act upon.

8. I have given my careful thought to the rival submissions. Considering the nature of allegations in the F.I.R. and the various stages of investigation, I feel, re-investigation by a competent authority would meet the ends of justice. Accordingly, the second respondent is directed to depute a competent Police Officer in the rank of DSP to take up further investigation in the matter, complete the same and file a final report within a period of three months from the date of receipt of a copy of this order.

9. Criminal Original Petition is allowed.

Dixit

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1.The Additional Deputy Commissioner,
Central Crime Branch,
Egmore, Chennai-8.

2.The Additional Director General of Police,
Admiralty House, CBCID,
Chennai-2.

3.The Inspector of Police,
Central Crime Branch-II,
Egmore, Chennai-8.

4.The Public Prosecutor,
High Court, Madras.

1 cc to Mr.P.H.Manoj Pandian, Advocate, SR.69863

MDR (CO)

dv/4.12.

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